

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE NM

AUG - 4 1999

UNITED STATES OF AMERICA,

Plaintiff,

ROBERT M. MARCH
CLERK

v.

No. CIV-99-0779 SC/KBM
CR-88-31 SC (JB)

GEORGE E. TANNEHILL, III,

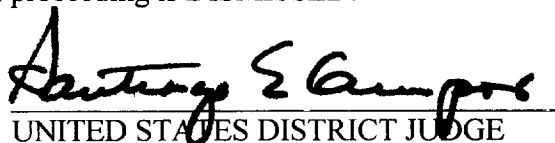
Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court *sua sponte* to consider Defendant's motion for modification of presentence report ("PSR") filed July 12, 1999, and treated administratively as a motion under 28 U.S.C. § 2255. Defendant, who was sentenced in 1988, asserts that the PSR failed to describe the factors considered in calculating his offense level or to recommend an adjustment for acceptance of responsibility. The motion seeks no relief other than modification of the PSR.

As recently observed by the Court of Appeals for the Tenth Circuit, this Court has no jurisdiction to consider the issues raised by Defendant except in a motion under 28 U.S.C. § 2255. *United States v. Smartt*, 129 F.3d 539, 542-43 (10th Cir. 1997). Defendant previously sought reduction of his sentence in a § 2255 motion based in part on the grounds raised in the instant motion. *United States v. Tannehill*, No. CIV-96-1075 BB/WWD. The § 2255 motion was dismissed by this Court as a second or successive motion, and the Tenth Circuit denied Defendant leave to prosecute the motion. The relief sought is precluded either as a jurisdictional matter or under the prohibition of successive § 2255 motions, and the motion for modification of the PSR will be denied.

IT IS THEREFORE ORDERED that Defendant's motion for modification of presentence report filed July 12, 1999, is DENIED, and this civil proceeding is DISMISSED.


UNITED STATES DISTRICT JUDGE

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